

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

74-1550

ORIGINAL

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Respondent,

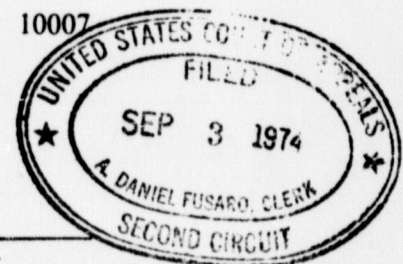
vs.

VINCENT D'AMICO, et al.,

Appellants.

BRIEF FOR APPELLANT, VINCENT D'AMICO

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TABLE OF CONTENTS

	<u>PAGE</u>
Preliminary Statement.....	1
Statement of Facts	1
Arguement	4
POINT I - The admission into evidence of nearly one million dollars was unrelated to the issue in this case..	4
POINT II: That the indictment charged one conspiracy and the proof established several conspiracies....	4
POINT III - The evidence against the defendant Vincent D'Amico was insufficient to convict on the substantive count.....	5
Conclusion,.....	7

TABLE OF AUTHORITIES

CASES

PAGE

UNITED STATES v. WILLIAMS, 168 U.S. 382(1897)..... 4

NEAL v. UNITED STATES, 102F 2d 643 8th Cir. 1939..... 4

UNITED STATES v. BRUNO, 105F2D 921 (2D Cir.)..... 5

DIRECT SALES COMPANY v. UNITED STATES, 319 U.S. 703(1943). 5

PRELIMINARY STATEMENT

Defendant Vincent D'Amico also known as Vincent Rizzo was charged, tried and convicted by a jury on two counts of a thirty-two count indictment. Count one charged him with conspiring with thirty-two other named defendants (seventeen of whom were charged with him) to distribute heroin from January 1, 1969 to the Fall of 1973, in violation of 21 U.S.C. 812,841. Count twenty-five charged him with distributing and possessing, in the month of November, 1972; a narcotic drug controlled substance to wit one quarter kilo of heroin.

Judge Kevin Duffy presided over the trial and imposed a five year sentence, after which he is to serve a special parole term of three years, which sentence was imposed under section 4208A.

STATEMENT OF FACTS

In order not to encumber the record, the statement of facts will be limited as to evidence against the defendant Vincent D'Amico.

The first witness to testify against Vincent D'Amico was Frank Stassi. He testified on page 403 that he went to the Centaur Bar and he met the defendant Vinnie, whose last name he did not know. However, he could not establish the date; he then testified that he had a conversation with the defendant Vinnie and Vinnie asked him if there were any goods around. (page 404).

He also said that he gave Vinnie some cocaine. The sample was used to determine if it was any good. There were inconsistencies if the other alleged transaction took place before or after the one previously testified to. The other transaction was an alleged conversation at the Centaur Bar in which it was stated that the defendant said that he would like to get some heroin from Stassi and that Stassi would let him know. Stassi testified on page 408 that he went to apartment 2B in a building located at 57th Street in Manhattan and the name Rizzo appeared on said door bell. This incident according to the indictment would have taken place in November, 1972. At the time that the narcotics was allegedly weighed, there was some discrepancy in weight. Stassi testified that a person by the name of Ralph Birdie came over to the apartment and that Birdie and D'Amico gave Stassi seven thousand dollars of which he gave six thousand-five hundred of to a man by the name of George Toutoin and kept five hundred for himself.

Page 410 identified Vincent D'Amico in the courtroom.

On the cross examination, Stassi admitted that he used cocaine in the sum of approximately two hundred and fifty dollars per week; that he used it exceedingly in bars and drank at the same time. On page 841, Stassi says that only one sale was made to the defendant Vinnie which is inconsistent to testimony on page 843, which states he made a sale to Allieboy. Stassi states that he does not remember how the seven thousand dollars was paid to him, that being large or small bills.

He also states that he never had the authority to sell or deliver narcotics to anyone and that his sale to Vinnie or anyone was outside of the scope of conspiracy.

The next witness to testify against Vincent D'Amico was Officer Connelly, who testified on page 1224 that he observed a conversation that took place in the Centaur Bar against Vincent D'Amico and Frank Stassi but that he was unable to hear their conversation and doesn't recall if his Kell Transmitter was working. He stated that he observed Vincent D'Amico and Frank Stassi go to the rear of the bar but he didn't see anything take place nor where they went to. He stated that his Kell Transmitter was not operating that night and that he knew that it was not operating for a period of three hours before he observed Vincent D'Amico and Frank Stassi in the Centaur Bar.

The next witness to testify against the defendant Vincent D'Amico was Mr. Finn who is the landlord. Mr. Finn testified under direct examination that Mr. Rizzo had his name on the door bell the month of November or December, 1972 but he admits on cross examination that it was February, 1973.

ARGUEMENT

POINT I

The admission into evidence of nearly one million dollars was unrelated to the issue in this case. In view of the fact that the alleged sales made by Stassi to defendant Vincent D'Amico was without the terms and agreement that Stassi allegedly had with defendants he allegedly conspired with and that he was under specific instructions not to make sales to anyone. The introduction into evidence of one million dollars indeed was of grave detriment to the defendant Vincent D'Amico, in no way could it have been related to him. The alleged sale to Vincent D'Amico was at best an isolated instance and if Vincent D'Amico were tried alone that some of money could not have been introduced as evidence.. In fact, the government in their own case through testimony of Stassi admits that any sale by Stassi was without the scope of the conspiracy. See United States v. Williams 168 U.S. 382 (1897) - Neal v United States 102F 2d 643 8th Cir.1939.

POINT II

That the indictment charged one conspiracy and the proof established several conspiracies. This point is made very absolute in the brief of the Appellants, Inglese, Christiano and Ceriale.

Although the Appellant under rule 28I of Federal Rules of Appellate Procedure adopts by reference arguments of Chief Counsel the Appellant herein specifically makes reference to co-counsels brief in view of the fact that same is the crux of the appellant appeal.

Page 675 Stassi testifies that George Toutoian had nothing to do with Louis Inglese. It is the narcotics that was allegedly obtained from George Toutoian that were allegedly sold to Vincent D'Amico. See United States v Bruno 105F2D 921 (2D Cir.) Direct Sales Company v United States 19 U.S. 703 (1943)

POINT III

The evidence against the defendant Vincent D'Amico was insufficient to convict on the substantive count. According to the indictment, the alleged sale by defendant Vincent D'Amico took place in November, 1972 in accessing the evidence it is clear that the defendant Vincent D'Amico did not reside in the premises in November, 1972, did not have the name Rizzo on the door bell until the earliest, 1973. The quantities of narcotics allegedly sold was inconsistent between indictment and evidence and in fact, the entire transaction was vague at best.

Page 27 United States v Bruno, 105 F.2d 921 (2Cir. 1939)

The evidence upon which the jury convicted the defendant Vincent D'Amico and the testimony and witness upon which relied do not meet the requirements of proving defendant guilty beyond a reasonable doubt.

If we stripped away the entire testimony except that which was testimony with respect to alleged sale of the substantive

count of the indictment, what would remain would be inadequate to find the defendant guilty on his conviction for substantive count of the indictment.

POINT IV

PURSUANT TO FEDERAL RULES OF APPELLATE
PROCEDURE, RULE 28 (i), APPELLANTS INGLESE,
CHRISTIANO AND CERIALE ADOPT BY REFERENCE
THE POINTS AND ARGUEMENTS OF ALL CO-APPELLANTS
APPLICABLE TO THEM

CONCLUSION*

THE JUDGMENT BELOW SHOULD BE REVERSED.

Respectfully submitted,

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D'Amico



U.S. COURT OF APPEALS: SECOND CIRCUIT

Index No.

U. S. A.,

Respondent,

against

D'Amico, et al,

Appellants.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK

SS.:

I, Laurel N. Huggins,

being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1050 Carroil Place, Bronx, New York

That upon the 3rd day of September 1974, deponent served the annexed Appellant's

upon *

attorney(s) for

in this action, at *

the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

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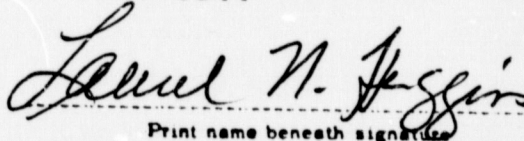
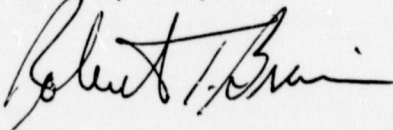
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day of September 19 74



Print name beneath signature

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